

ANALYSIS OF ORIGINAL BILL

Author: Oller Analyst: Gloria McConnell Bill Number: AB 2450

Related Bills: _____ Telephone: 845-4336 Introduced Date: 02/20/98

Attorney: Doug Bramhall Sponsor: _____

SUBJECT: State Tax liens Filed in Error/FTB Mail Notice of Expungement

SUMMARY

Under this bill if the Franchise Tax Board (FTB) determines that its issuance of a notice of tax lien was in error, the FTB would be required to mail a notice of expungement (instead of the current notice of release) and take other actions relating to the "expungement." The notice of expungement would direct the recording entity to remove the notice of state tax lien from its files and destroy the original notice of state tax lien.

If FTB were to file a notice of expungement with the Secretary of State (SOS), in addition to removing from its files and destroying the original certificate or notice of state tax lien, the SOS would have to mail specified documents to the taxpayer and could not charge a fee if the lien was filed in error.

Additionally, the bill would authorize FTB to issue a notice of expungement if it would facilitate collections or if in the best interest of the state and taxpayer.

EFFECTIVE DATE

The bill would be effective and operative on January 1, 1999.

PROGRAM HISTORY/BACKGROUND

Under current practice, when an income or franchise tax debt is greater than \$250, FTB typically issues a notice of state tax lien to the county of last known address and may issue a notice of state tax lien in any other county where FTB determines the taxpayer has a real property interest. A notice of state tax lien recorded with the county attaches to any interest in real property that the debtor has at the time the lien is recorded or any future interests in real property. Also, FTB may issue a notice of state tax lien to the SOS when personal property is located or out-of-state collection actions are anticipated.

The Government Code provides statutes for perfecting and enforcing state tax

DEPARTMENTS THAT MAY BE AFFECTED:

____ STATE MANDATE

____ GOVERNOR'S APPOINTMENT

Board Position:

____ S ____ O
____ SA ____ OUA
____ N ____ NP
____ NA ____ NAR
____ X ____ PENDING

Agency Secretary Position:

____ S ____ O
____ SA ____ OUA
____ N ____ NP
____ NA ____ NAR
DEFER TO _____

GOVERNOR'S OFFICE USE

Position Approved ____
Position Disapproved ____
Position Noted ____

Department Director Date
Gerald H. Goldberg 4/6/98

Agency Secretary Date

By: Date

liens (Section 7150, et seq.), for the SOS with respect to state tax liens (Sections 7220, et seq.), and for the counties with respect to the recording of documents in general (Sections 27360, et seq.), which includes releases of liens by the state (Section 27361.3 and 6103.8).

From January 1, 1997, to present, FTB has issued a total of approximately 350,000 notices of state tax liens to counties and the SOS. FTB releases notices of state tax lien as recorded or filed in error when a notice of state tax lien is recorded after payment of the debt, a notice is recorded using an incorrect name or account/social security number, or the liability at issue was established in error. From January 1, 1997, to present approximately 14,000 of the county liens were released as recorded in error and approximately 85 of the SOS liens were released as filed in error.

SPECIFIC FINDINGS

Under current law various procedures must be followed by FTB if it determines its notice of state tax lien has been filed in error. These procedures include mailing the release to the taxpayer and the county or SOS, as appropriate, upon FTB's receipt of the recording information, and mailing copies to certain parties if the lien is obstructing a lawful transaction. The SOS and counties charge fees for processing the lien or release. The fees are charged the tax debtor at the time the lien is released. When FTB determines the notice of lien was issued in error, the release notice contains a statement as to the error, and neither counties nor SOS charge the fees. Additionally, FTB may release a lien at any time it determines that a release is warranted and expressly may release a lien if it would facilitate the collection of the debt, or if it is in the best interest of the state and the taxpayer.

Under this bill, a notice of expungement would take the place of a release of a notice of state tax lien that is filed in error. The FTB basically would substitute a notice of expungement for the release and continue the same procedures currently provided. The SOS expressly could not charge for processing the notice of expungement if FTB states that the notice of state tax lien was filed in error. Additionally, FTB may issue a notice of expungement at any time it determines that a release is warranted and expressly may issue a notice of expungement if it would facilitate the collection of the debt, or if it is in the best interest of the state and the taxpayer.

Currently, upon receipt of FTB's notice of state tax lien, the county recorder and the SOS, as applicable, gives the notice an identifying number. The county recorder returns to FTB the original, and SOS returns a copy of the notice with the identifying number. FTB retains these numbers for future reference. The identifying number must be included on the notice of release. The identifying number is used to cross-reference the release to the lien.

Under this bill, the county that recorded a notice of state lien filed in error by FTB would be required to remove the lien from its files and destroy the original notice of state tax lien. Upon receipt of a notice of expungement, SOS would be required to (1) remove from its files and destroy the original notice of state tax lien, (2) mail to the taxpayer the original of the notice of expungement, and (3) certify that all documents and recordings pertaining to the original have been removed and destroyed.

Implementation Considerations

FTB staff raises the concern that the county recorder and SOS, under their current practices, may not have the resources or technology needed to implement and comply with the notice of expungement that FTB would be required to issue under this bill.

Technical Considerations

Staff has identified the following technical considerations:

- Section 7233.1 makes reference to certificates or notices of state tax liens. FTB does not issue certificates of state tax liens; therefore, reference to "certificate" in Section 7223.1 could be eliminated.
- The bill would require the recording entity to remove the lien from its files (page 3, line 29). It should be clarified that the document at issue is not "the lien," but instead "the notice of state tax lien that was filed in error."
- This bill would provide within the FTB Taxpayers' Bill of Rights (Section 21019) that the recording entity, which is the county, would be required to remove from its files and destroy the erroneously filed notice of state tax lien. However, this requirement would be more recognizable by the counties if it were added to the Government Code, which more directly applies to them (e.g., Government Code Sections 27360 et seq.), instead of the laws administered by FTB.

FISCAL IMPACT

Departmental Costs

This bill should not significantly impact FTB's departmental costs.

Tax Revenue Estimate

This bill would have no revenue impact.

BOARD POSITION

Pending.